88-223

In The

Supreme Court of the United States

Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
CLERK

LEONARD J. KERPELMAN,

Petitioner

vs.

STATE OF MARYLAND,

Respondent.

October Term 1987

No.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND

LEONARD J. KERPELMAN
2403 W. Rogers Avenue
Baltimore, Maryland
21209
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In Proper Person

45

1. (a)

Questions Presented for Review

The Petitioner is engaged in a most difficult legal specialty: representing men in domestic litigation including custody and today's popular (and ordinarily false as to the genetic father) charges of child sexual abuse, and "kidnapping". In properly doing this work he has somehow not endeared himself to a state judiciary which he finds to be constantly and significantly biased against his clients. He also has the distinction, in a state noted for its judicial conservatism, of having been counsel before this Court in the School Prayer Case.

As a result, Petitioner alleges -or for unknown other reasons - strange things have happened to him professionally, for he is, withal a quite normal fellow.

The strangest of these has to do with his conviction and sentence for contempt of court as set forth in the following "Questions Presented".

1. Terms and circumstances of the case:

(a) A criminal trial.

(b) An explicitly hostile court.

(c) A beleaguered attorney (the Petitioner) seeking to protect and advocate the proper legal position of a criminal defendant against the overtly hostile court.

(1) The defendant (not the Petitioner) was a father

(2) With a valid, jurisdictionally correct, California Decree granting custody to himself;

(3) But he had been charged with "Felony Parental Kidnapping" under Maryland state law, when he picked up his children, in Maryland, California Decree in hand; it was strenuously disputed

that any Maryland temporary or permanent custody Decree then applied;

(4) He had been extradited to Maryland for trial

(5) Where he declined to be tried by the court

(6) But chose a jury of his peers

(7) And non-local (from a far county) non-lay-down-and-die counsel, whom he trusted,

(8) Which counsellor (the Petitioner) had practised law for over 30 years,

(9) And whose record contains no former conviction for contempt of court.

(d) The Petitioner, in the midst of the difficult and acerbic trial was summarily convicted of criminal contempt,

(e) But several days later was denied the right to be represented by skilled counsel of his choice at sentencing

(1) In violation of the decisions of the federal local Fourth Circuit Court of Appeals,

(2) And of other circuits and of the Maryland Court of Appeals itself.

(f) Whereupon, counsel, the Petitioner, was sentenced to jail,

(g) Which is the first such confirmed sentence of an attorney in the entire history of the state, it is believed,

(h) And appears to have been part of an effort by the court to get the jury to convict, for at the end of the case, the court used the criminal conviction unlawfully to secure a civil result: namely, the return of the

children to Maryland in defiance of the California court's jurisdiction.[1]

---

[1] Transcript Vol. II of the underlying criminal case (part of the Record in the appellate court), at pp. 194-198.

THE COURT: (H)e has now been convicted, he's facing three years in jail. ...

What is the status with the children? ...

(PETITIONER): They are in California, Your Honor.

THE COURT: All right, if he can get them back here in --I'm going to remand him to the custody of the sheriff pending the return of those children. ...

How long will it take you to get the children back here?

The judge of the California court, on the other hand, had been actively objecting to Maryland's assumption of jurisdiction. Unquestionably. Same Tr. Vol. II, pp. 165-170, where the court master who had conferred with the California judge refuses to answer questions about the conference.

(i) And if the conviction remains there is no question but that it will be used to seek the disbarment of the Petitioner. That proceeding has already been begun. Maryland Attorney Grievance Commission Docket BC 87/342-4-7.

Question 1:

Was the jail sentence, imposed on Petitioner, without benefit of counsel to argue against the harshness of it and its general chilling effect on the practise of law, among other arguments, a violation of the Petitioner's federal Due Process and Sixth Amendment right to counsel?

Subsidiary Question 1:

Is this ominous, historically unique sanction against an attorney, unlawfully imposed by the court without benefit of counsel, a

harbinger of an even further unlawful extension of judicial power designed to control the practise of law and to chill the right of citizens to vigorous and ethical representation by independent counsel?

2. Same Terms and Circumstances set forth in 1. (a), (b), (c) and (d); and

(j) State law (by court Rule) provides that a charge of contempt is to be expressed in an "order" setting forth "facts" which are to provide the basis for appellate review (this Rule is required by Due Process decisions of this Court)

(k) But the trial court instead issued an "order" setting forth both a simple contempt case --refusal to comply with the court's oral directive --and the charge that the

Petitioner engaged in conduct which was

> "rude", "arrogant", "contemptuous", "obnoxious", "angry", "spiteful", "outrageous", "impolite" and "impossible to accurately describe" (A15-25, esp. A16, 21, 25 Order of Contempt).

(l) None of which was borne out by the transcript of the trial, but on the contrary, all of the examples cited by the trial court are refuted in the record as being either negligently stated, or even consciously falsely stated (Petitioner's Affidavit A30-49), and

(m) The state, at oral argument had abandoned any contention that the contempt charge was other than the violation of the one oral directive, but

(n) Nevertheless the appellate court chose to specifically rely on the

conclusory and pejorative characterizations of the trial court, and made a formal finding that these characterizations "serve(d) to supplement the judge's findings with regard to the intent and purpose (of the) contemptuous act", Slip Opinion, p. 7 (A13).

Question 2:

Was this specific reliance of the appellate court on the pejorative, vague and conclusory language in (k) a denial of Due Process of Law?

The following question is not one upon which the court is at all likely to grant certiorari. It is included only to preserve the matter for argument if the petition is otherwise granted.

Please skip this material for now.

Resume at p. xii.

3. Same terms and circumstances set forth in 1.(a), (b), (c); and

(o) After the delivery of an unreasonably ambiguous admonition,

(p) Which any reasaonbly intelligent attorney would probably have misunderstood or not understood, and which Petitioner has sworn he did misunderstand

(q) Followed substantially later (eighteen pages later in the transcript) by an incident in which the judge can well be said to have facially misunderstood the attorney's action and so convicted him of contempt; and

(r) The attorney can well be said to have facially misunderstood the judge's oral prohibition and so was convicted of contempt.

Question 3:

Was it a violation of federal Due Process to convict the Petitioner of contempt under those circumstances?

Subsidiary Question 3:

When the consequent chilling effect of convicting a trial attorney of contempt is on the citizen's right to a jury trial and to the assistance of vigorous, independent counsel under the Fifth and Sixth Amendments, should the evidence under the standard of "proof beyond a reasonable doubt" (this is both the state and federal standard) also be said to require under Due Process that where there is a conflict between the court's charge and the alleged contemnor's sworn statement which can reasonably be resolved either way, that all fact questions and all disputed interpretations of facts must be

resolved in favor of the alleged contemnor to prevent unreasonable power over the bar from lodging with the bench? This is believed to be a new, but important jurisprudential proposition. (It is not believed, as has been pointed out that the court would be ready to grant certiorari on this point alone. Questions 1 and 2 concern far more egregious, and less complex, sins.)

1. (b)

All Parties Below

These are the Petitioner, representing himself, and the State of Maryland represented by the Attorney General of Maryland.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW	i-xii
ALL PARTIES TO THE PROCEEDINGS	xii
THIS TABLE OF CONTENTS	xiii-xiv
TABLE OF AUTHORITIES	xv-xvii
TABLE OF CONTENTS OF APPENDIX	xviii
REFERENCE TO OFFICIAL AND UNOFFICIAL REPORTS	1
CONCISE STATEMENT OF GROUNDS FOR JURISDICTION	2
CONSTITUTIONAL PROVISIONS, STATUTES, RULES OF THE MARYLAND COURT	3
A CONCISE STATEMENT OF THE CASE	4
ARGUMENT	14
Denial of Right to Counsel	14
Conclusory, Vague, General and Pejorative Language in the Charge	16

Was the Contempt Conviction Had on Evidence Sufficient Beyond a Reasonable Doubt, and By Due Process 21

On the Contempt 21

AFTERWORD 24

CONCLUSION 25

TABLE OF AUTHORITIES

	Page
Appeal of Brunwasser 490 F2d 1068 (1973)(3rd Cir.)	14
Golden v. Superior Court 8 Ariz. App. 25, 442 P2d 562	18
Holt v. Virginia, 14 L.Ed. 230,20	23
In re Gustafson, CA9 Cal. (1979) 608 F2d 767	17
In re Kilgo, 484 F2d 1215 (1973) (4th Cir.)	14
Intern'l Longshoreman's Assoc. v. Philadelphia Marine, 88 S.Ct. 201, 389 N.S. 64, 19 L.Ed. 236 (1967)	17
Johnson v. United States 34 F2d 401, 403 & 411 (2nd Cir.)	14
Kotowski v. Kotowski, Ill. App. 3d,231, 278 NE 2d 856	18
Lee v. State, 56 Md. App. 613 (1983)	15
People ex rel. Bernstein v. LaFetra, 171 App. Div. 269, 157 NYS 387	18

	Page
People v. Salbar, 282 Ill. App. 506	18
Re Agaisas (Phillippine) 154 ALR 1239	18
Re Mettler, 50 Mont. 299, 146 P.747	18
Rutherford v. State, 296 Md. 363 (1983)	15
State v. Roll and Scholl, 276 Md. 714, 734 (1973)	6
U. S. v. Willett (4th Cir.) (1970)	15
State ex rel. Rankin v. District Court, 58 Mont. 276, 191 P.772	18

Constitutional Provisions

Due Process	vi, vii, ix, xi, 3, 7, 8, 15, 18 19, 21, 23
Fourteenth Amendment	3
Fifth Amendment	xi, 3
Sixth Amendment	vi, xi, 3, 23

Page

Statutes

Title 28 USC Sec. 1257(3) 2

Rules

Maryland Rule P3b 3

Maryland Rule P3c 4

Supreme Court Rule 17 14

TABLE OF CONTENTS
OF APPENDIX

		Page
	Materials Required by Supreme Court Rule 21.1 (k)	
(i)	Opinion ("Unreported") of Court of Special Appeals of Maryland (the Court Whose Decision Is Sought to Be Reviewed)	A2-A15
(ii)	Other Such Opinions, Findings, etc. Rendered In The Case	A15
((a))	Opinion and Order of the Trial Court	A15-A18
((b))	Supplemental Opinion and Order of the Trial Court	A19-A25
(iii)	Judgment Sought to Be Reviewed (Mandate) of the Court of Special Appeals of Maryland	A26-A27
	(iv)	
	Other Appended Materials	
((a))	Extracts from "Appellant's" (Petitioner's) Affidavit Below	A28

	Page
Answer to the Substantive Complaint	A29
Answers to Trial Court's Examples	A30
((b)) Extract of Proceedings, Contempt Case Below	A50-A63

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Opinion Reported

The Opinion of the Court of Special Appeals of Maryland is appended hereto at pp. A1-A4; it is an "Unreported Opinion" of the appellate court and does not therefore appear in any of the case reports.

(e)

Grounds for Invoking the
Jurisdiction of the Supreme Court

(i) and (ii)

Judgment nisi was entered in the Court of Special Appeals of Maryland December 21, 1987; this judgment became final upon the issuance of the Mandate of the Court dated January 20, 1988.

There is no appeal granted by state law as a matter of right from the final judgment of January 20, 1988, and hence, this Petition for Writ of Certiorari to this Court.

(iv)

Jurisdiction to review the judgment in question is believed to be conferred by Title 28 USC Sec. 1257(3):

> Final judgments or decrees rendered by the highest court of

a state in which a decision could be had, may be reviewed...

(3)by writ of certiorari, where ...any ...right, privilege or immunity is ...claimed under the Constitution ...of the United States."

(f)

Constitutional Provisions, Statutes, Etc., Involved

Fifth and Sixth Amendments U. S. Constitution: Due Process, right to counsel, right to jury trial.

Fourteenth Amendment U. S. Constitution: Due Process.

"Maryland Rules" (Rules of the Court of Appeals of Maryland):

Rule P3b. "Order of Contempt:"

"When a direct contempt is committed, the court shall sign a written order to that effect. The order shall recite the facts, be signed by the judge and entered of record. The order shall state which of the facts

were known to the court of its own knowledge and as to any facts not so known, the basis for the court's finding with respect thereto."

and P3c. "Record":

"The record in such cases shall consist of

(1) such order of contempt,
(2) any affidavit filed by the defendant...
(4) any testimony... ."

(g)

A Concise Statement of the Case

This has been done in the expression (above, pp. i et. seq.) of the "Terms and Circumstances of the Case."

(h)

How the Federal Questions Were Raised and Decided

1.

Right to Counsel

In the Court of First Instance:

Proceedings: Misc. No. 6873

Tr 4 (PETITIONER): I have engaged the services of Mr. Eugene Zoglio ...and he is unable to appear (today).

THE COURT: He called me yesterday and I advised him that ...the matter was set this morning ...and we are going to proceed...

Tr 5 (PETITIONER): ...I conferred with Mr. Zoglio. He is very anxious to represent me. I am very anxious to be represented by him. I ...need his services. He would be available in a very short time. He would be available on the 10th, or on the 13th, and --

(This would have been within eight days.)

THE COURT: I gave you ...an extra day. I do not intend to continue the matter any further ...I don't even know whether or not you have a right to counsel...

(PETITIONER): Your Honor is giving it with one hand and taking it back with the other.

THE COURT: No, I am not either. I gave you from Tuesday until this morning (Thursday) to get counsel.

(PETITIONER): I was unable to arrange counsel in that very brief period of time. (A53 - A56)

In the appellate court (P. 6 of the Slip Opinion) the court states:

> ...Appellant argues that the trial court deprived him of his right to assistance of counsel. ...This argument assumes that appellant had a right to counsel. It overlooks the fact that appellant was punished for direct contempt. The trial court was thus authorized to impose sentence with no hearing at all. ... State v. Roll and Scholl, 276 Md 714, 734 (1973). In light of this, there is no need for the services of an attorney to protect the contemnor. (Emph. supp.) (A11-A12)

2.

Vague, General, Conclusory and Pejorative Language of the "Charge"

In the Court of First Instance:

Proceedings: Misc. No. 6873

> Tr. 16 (PETITIONER): ...I was not informed that the citation was for a course of conduct. ...(A65)
>
> Tr. 19 Your Honor got me off the track. Your Honor did not tell me I was coming here today to defend a pattern of conduct. Nor did Your Honor, respectfully, admonish me that before citing me for contempt. ...That was not fair. Whether it is in keeping with the law of contempt or not, it wasn't fair. (A66)

By virtue of the court's refusal, Petitioner was not being represented by counsel at this point. Mr. Zoglio, Petitioner's choice, would undoubtedly have been cool and objective enough to specifically refer to Due Process.

In the appellate Court (p.7 of the Slip Opinion) (A13), the court holds:

> Unlike the (Petitioner) we do not find the opinion and order or the supplemental opinion and order to be "prolix material" or "fraught with confusion". The trial judge's description of (Petitioner's) many instances of abnormal behavior during

> the trial serves to supplement the judge's findings with regard to the intent and purpose of (the) contemptuous act.

(Showing the appellate court meeting a pejorative with a pejorative and not meeting the "fairness" (Due Process) question raised at all.)

3.

Contempt

(The court is not believed to be interested in this question. Please go to p. 14)

Ambiguous Admonition and Violation Thereof Beyond A Reasonable Doubt

(Tr. Vol. II, P. 65) (Of the underlying trial):

> MR. KERPELMAN: (Of the Defendant) The State's Attorney has involved these children in several fights .. . You have been charged repeatedly --
>
> MRS. FOOTER: Objection, Your Honor, I --
>
> MR. KERPELMAN: I haven't finished the question ...
>
> THE COURT: Mr. Kerpelman, stop; do not pursue that line of questioning, it is not relevant.
>
> MR. KERPELMAN: Oh, thank you, thank you. Okay. Of course, I respectfully disagree. For the record, I believe it is very relevant. Your Honor, stop me if you want me to approach the bench, but I have a reason why I would like to suggest to the Court that it's totally relevant.
>
> THE COURT: Thank you, sir.
>
> MR. KERPELMAN: And that is the Supreme Court cases on selective

prosecution and the Supreme Court cases on vindictive prosecution, both of which fit into this case beautifully.

THE COURT: Thank you, sir.

MR. KERPELMAN: Okay. Would Your Honor wish to reconsider this Court's ruling?

THE COURT: No, I do not wish to reconsider that and I am instructing you not to pursue that line of questioning.

"Violation" of the Admonition

(Eighteen pages later at Tr. 83-84)

BY MS. FOOTER:

Q Now, you testified that back in February of 1985 sometime, the three children were all in Maryland together with your wife. Is that correct?

A What's that --yes.

Q All right. And that you came to Maryland and that you picked up two of the children. Is that correct?

A That's correct, yes.

Q And that it wasn't practical to get the third child, isn't that correct?

A "To get the third child?" What do you mean by that? I'm sorry.

Q Well, that was your statement, you said it wasn't practical to take the third child with you back to California.

A To take the third child with me back to California.

(PETITIONER):

If Your Honor please, may I approach the bench at this time?

THE COURT:

No, sir.

(PETITIONER):

All right. Well, the Court has prohibited us from bringing out the fact that Mr. Cowles was previously charged with assault --

MRS. FOOTER:

I object --

(PETITIONER):
(continuing) --and the case was dismissed.

THE COURT:

Mr. Kerpelman, don't you make another statement.

(PETITIONER):

I asked --

THE COURT:

Don't make another statement and sit down. You know that's improper and all you are trying to do is cause error and a mistrial in this case, Mr. Kerpelman.

After dismissing the jury, the court informed Appellant that he was in direct criminal contempt (Tr II, 85).

At Tr. Vol. II, P. 130 not long after the incident, Petitioner in a colloquy with the court said:

(M)ay I say I didn't understand Your Honor to tell me to stop. I understood Your Honor to tell me not to approach the bench ... and on previous occasions you told me to make the record from the trial table. ...I believed Your Honor was telling me not to

approach the bench and I therefore proceeded to make the record at the trial table.

Ruling in the appellate court (p. 5, Slip Opinion (A10)):

In the case at bar there was sufficient evidence for the trial court to be convinced beyond a reasonable doubt that appellant knowingly disobeyed one of its orders. ... Appellant's contention that he misunderstood is disingenuous. ...

ARGUMENT

A Direct and Concise Argument Indicating the References Referred to in Supreme Court Rule 17

1.

First Question Referred to in "Questions Presented":

Denial of Right to Counsel

The Maryland Court's opinion in this case is directly opposed to the Fourth Circuit (Maryland) and other federal Circuit Courts of Appeal cases:

> A contemnor, convicted or alleged, is entitled to counsel at every stage, and, at this stage of the proceeding, the sentencing stage. Johnson v. United States, 34 F2d 401, 403 and 411 (2nd Cir.) In re Kilgo, 484 F2d 1215 (1973), (4th Cir.). See Appeal of Brunwasser, 490 F2d 1068 (1973) (3rd Cir.) on the non-need for "immediate" sentencing in very similar circumstances, and on denial of the right to counsel. The case reversed.

U. S. v. Willett, (4th Cir. 1970), same. Also exactly in point Lee v. State, 56 Md. App. 613 (1983) and Rutherford v. State, 296 Md. 363 (1983) for non-lawyer defendants.

Maryland seems to have carved out an anti-lawyer exception to what it knows to be the law. This is surely constitutionally impermissible. Due Process: Lawyers are entitled to it, surely, as well as anyone else.

The Maryland court, instead, contrary to the non-lawyer cases, held herein:

> "(Appellant's) argument assumes that appellant had a right to counsel. It overlooks the fact that appellant was punished for direct contempt. ...The trial court was thus authorized to impose a sentence ...with no hearing at all. ...There is no need for the services of an attorney." (Slip Opinion ("Unreported") p.6 (All).

The Petitioner points out that he was not punished summarily, at once. It was several days later that he was denied counsel, at the disposition stage. All of the federal cases in the various circuits give the right

to counsel where the dispoition or sentencing stage has been delayed.

2.

Second Question Referred to in "Questions Presented":

Conclusory, Vague, General and Pejorative Language in the Charge

By directly relying, in its Opinion, on the trial court's rhetorical, pejorative, conclusory, vague and indefinite "finding", of "facts" (see Questions Presented herein-above p. viii) for the trial court's statement/, did the Maryland court of last resort decide the federal question (Due Process) in a way in conflict with the decisions of other state courts of last resort, or of federal courts of appeal?

It did.

It violated a principle of logic handed down by CA9 Cal. In Re Gustafson, (1979) 608 F2d 767 where the court in a contempt case had referred to counsel's "speed of delivery" and "improper argument"; which was found to be "conclusory" and "general" and insufficient to support a finding of contempt.

And see International Longshoreman's Association v. Philadelphia Marine, 88 S.Ct. 201, 389 U.S. 64, 19 L.Ed. 236 (1967), in which, while the court was indeed speaking of a decree, not a contempt charge, it neverhteless stated:

> "The judicial power is a potent weapon and when founded upon a decree too vague to be understood, is a deadly weapon..."

The Maryland appellate court's finding also violated principles laid down in many state cases:

> A declaration by the courts containing a mere finding of the ultimate facts such as that the behavior

> of the contemnor was menacing, insolent, insulting and contemptuous, or boisterous have been held to constitute conclusions that would not support an adjudication of direct contempt. 17 Am Jur 2d Contempt, P. 101. Citing Re Agaisas (Phillipine), 154 ALR 1239 Re Mettler 50 Mont. 299, 146 P. 747; People ex rel. Bernstein v. LaFetra, 171 App. Div. 269, 157 NYS 387; State ex rel. Rankin v. District Court, 58 Mont. 276, 191 P. 772; People v. Salbar, 282 Ill. App. 506; Kotowski v. Kotowski, Ill. App. 3d 231, 278 NE 2d 856 "disorderly, contemptuous and insolent"; Golden v. Superior Court, 8 Ar z. App. 25, 442 P2d 562.

In the Kotowski case (exactly analogous as are just about all of these):

> "Inasmuch as direct contempt proceedings constitute an exception to constitutional guarantees of Due Process, it is imperative in order to preserve a meaningful review that the contempt order itself contain all the factsnecessary to reveal the contumacious act."

In this case the situation is made much more definitively unjust by the fact that the trial court had "bolstered" its conclusory

charges (in the phrase of the appellate court the court "supplements his finding") (A 13) with certain "examples". These "examples", however, were, to put it mildly, distortions, or in some cases they appear to be conscious misstatements of the real facts.

In the Appendix at A 30 to A 49 , every such "example" of the trial judge is carefully, sometimes starkly, shown to be such.

This being so, and it is suggested the Appendix shows that it is, the very approval of the use of the conclusory language by the appellate court, its failure to in any way compare the general language of the trial court's charge with the record which it had before it is, must be, seen as a denial by it of federally required Due Process.

One cannot, surely, within Due Process strictures, be convicted on made-up evidence

--whose refutation is right there to be seen, in facts, not conclusions.

And, above all, this ready refutation shows the logic and worthiness of the settled rule against conclusory language and general charges.[1]

At the appellate court hearing the state had, in fact, conceded[2] that the only charge it was pressing was the single simple standard charge of an oral directive of the court being violated after a proper admonition had been given.

The appellate court, willy nilly, chose

---

[1] Such as, may it be said, calling the Petitioner "abnormal"! See p. 7 Slip Opinion of Appellate Court. (A13)

[2] It is believed the proceedings were recorded on tape, as in this Court.

to pull in all of the generalized material brought in by the conclusory charge, and to approve it. It erred, and did so contrary to the cases cited above in the 9th Circuit, and in the many state cases.

3.

Third Question referred to in "Questions Presented":

Was the Contempt Conviction Had on Evidence Sufficient Beyond a Reasonable Doubt, and By Due Process?

On the Contempt

The Court is not expected to grant certiorari on Question 3. This argument may be skipped.

There was no contempt at all. To say that the contrary was proved beyond a resonable doubt is on the face of the record a denial of Due Process. It is respectfully suggested

the evidence was entirely insufficient. What happened was a misunderstanding. Or even two. --About approaching the bench. About not mentioning former charges versus not mentioning an acquittal by a jury of those charges.

This Court, other federal courts, and other state courts have never been as blindly supportive of the nisi prius court, against a practising attorney, as the Maryland Court of last resort in this case has been.

It is a dangerous thing. This Petitioner is suggesting more, however: he is suggesting that representation by independent counsel not operating under the restraint of fear of an unreasonable court, is so important to every civil right that any court can establish that it is respectfully urged that this Court consider taking the position that charges against an attorney, of contempt, are

of a special constitutional importance; that they are so strongly related to the "Right to the Assistance of Counsel"(as stated in the Sixth Amendment) and to the independence of the bar from any pall of the fear of judicial tyranny which may be laid, that the rule should be thus: Where two possible interpretations of the facts will lie, in the poisement of the attorney's affidavit against the court's charge of contempt, then that interpretation consistent with innocence must, in the exercise of Due Process, be adopted by every court.

Moreover, the Petitioner did not obstruct the court. See Holt v. Virginia, 14 L.Ed. 230, 290. Obstruction is, constitutionally, a necessary element in contempt.

AFTERWORD

Petitioner states, without modesty, that he loves his work,and so, has always won every jury trial he has had, arising out of a domestic case. --Only a dozen to this time --but each was of the utmost difficulty and importance. Particularly, the cases of false charges of child sexual abuse, and of "kidnapping" by fathers.

But though he believes he had a good jury in this case, he did not win.

In this case, he believes, and he alleges that the record will show,that it is at least arguable that it was the aggressiveness of the judge and not the work of the State's Attorney which persuaded the jury to a guilty verdict; and also not the facts.

CONCLUSION

Certiorari should be granted.

God Save the Republic.

Respectfully submitted,

Leonard J. Kerpelman
In Proper Person

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LEONARD J. KERPELMAN
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TABLE OF CONTENTS

	Page
Additional Opinion Reported.....	1 Supp.
Supplement to Grounds for Invoking the Jurisdiction of the Supreme Court.....	2 Supp.

TABLE OF AUTHORITIES

Statutes

Title 28 USC Section 1257(3).....	2 Supp.

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(d)

Additional Opinion Reported

The Opinion of the Court of Appeals of Maryland is appended hereto in this Supplement at Pp. A1 Supp. - A2 Supp. It is reported at

Md ; A2d .

(e)

Supplement to Grounds for
Invoking the Jurisdiction of
the Supreme Court

(i) and (ii)

Following rejection of the Petitioner's appeal by the Court of Special Appeals of Maryland, a Petition for a Writ of Certiorari to that intermediate court was duly filed in the Court of Appeals of Maryland, the "highest court of the state in which a decision could be had" for the purposes of Title 28 USC Section 1257(3). This petition was denied on June 16, 1988 (See page 1A Supp.).

In his Petition for Certiorari, the Petitioner --probably erroneously --states that the Court of Special Appeals of Maryland is such "highest" court; the further

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(d)

Additional Opinion Reported

The Opinion of the Court of Appeals of Maryland is appended hereto in this Supplement at Pp. A1 Supp. - A2 Supp. It is reported at

Md ; A2d .

(e)

Supplement to Grounds for
Invoking the Jurisdiction of
the Supreme Court

(i) and (ii)

Following rejection of the Petitioner's appeal by the Court of Special Appeals of Maryland, a Petition for a Writ of Certiorari to that intermediate court was duly filed in the Court of Appeals of Maryland, the "highest court of the state in which a decision could be had" for the purposes of Title 28 USC Section 1257(3). This petition was denied on June 16, 1988 (See page 1A Supp.).

In his Petition for Certiorari, the Petitioner --probably erroneously --states that the Court of Special Appeals of Maryland is such "highest" court; the further

petition to the Court of Appeals of Maryland undoubtedly resolves the matter, that court having rejected the petition to it for the writ to the intermediate court.

This substantive denial was for the "failure" to show:

> "(T)hat review (by the higher court) is ...desirable and in the public interest."

Respectfully submitted,

LEONARD J. KERPELMAN
Petitioner, In Proper Person

SUPPLEMENTAL APPENDIX

LEONARD J. KERPELMAN	In the Court
	of Appeals
	of Maryland
v.	
	Petition Docket No. 99 September Term, 1988
STATE OF MARYLAND	(No. 464, Septembe Term 1987, Court of Special Appeal

O R D E R

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/Robert C. Murphy
Chief Judge

Date: June 16, 1988

88-233

Supreme Court, U.S.
FILED
AUG 10 1988
JOSEPH F. SPANIOL, JR.
CLERK

In The

Supreme Court of the United States

LEONARD J. KERPELMAN,

Petitioner

vs.

STATE OF MARYLAND,

Respondent.

October Term 1987

No.

APPENDIX

LEONARD J. KERPELMAN
2403 W. Rogers Avenue
Baltimore, Maryland
21209
(301) 367-8855

In Proper Person

APPENDIX

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW	i-xii
ALL PARTIES TO THE PROCEEDINGS	xii
THIS TABLE OF CONTENTS	xiii-xiv
TABLE OF AUTHORITIES	xv-xvii
TABLE OF CONTENTS OF APPENDIX	xviii
REFERENCE TO OFFICIAL AND UNOFFICIAL REPORTS	1
CONCISE STATEMENT OF GROUNDS FOR JURISDICTION	2
CONSTITUTIONAL PROVISIONS, STATUTES, RULES OF THE MARYLAND COURT	3
A CONCISE STATEMENT OF THE CASE	4
ARGUMENT	14
Denial of Right to Counsel	14
Conclusory, Vague, General and Pejorative Language in the Charge	16

Was the Contempt Conviction Had on Evidence Sufficient Beyond a Reasonable Doubt, and By Due Process 21

On the Contempt 21

AFTERWORD 24

CONCLUSION 25

21.1 (k) (i)

Opinion Sought to Be Reviewed

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 464,

September Term, 1987

LEONARD KERPELMAN

-v-

STATE OF MARYLAND

Moylan,
Weant,
Pollitt,
JJ.

PER CURIAM

Filed: December 21, 1987

Appellant, Leonard J. Kerpelman, was found guilty in the Circuit Court for Montgomery County of direct criminal contempt. The contemptuous incident occurred while appellant was representing Clifford M. Cowles, the defendant in a criminal jury trial in the Circuit Court for Montgomery County. Mr. Cowles was charged with abducting his own children from the custody of his ex-wife.

The Cowles trial lasted two days. The transcript of that trial reveals several instances of inappropriate conduct on the part of appellant Kerpelman. The incident for which he was held in contempt occurred on the second day of trial.

One of the arguments appellant sought to make on Mr. Cowles's behalf was that the State was guilty of vindictive and selec-

tive prosecution. Mr. Cowles testified in his own behalf. During direct examination, conducted by appellant, Mr. Cowles testified that he had flown from his home in California to Maryland and taken two of his three children back to California with him. This had occurred prior to the alleged abduction for which Mr. Cowles was on trial. Later in the direct examination of Mr.Cowles, appellant sought to elicit from him that he had been charged with child abduction as a result of the earlier incident, and that the charges had been dismissed. This effort was thwarted by the trial judge:

BY MR. KERPELMAN:

> Q Now, as a matter of fact, the Montgomery County State's Attorney's Office has involved these children in several fights, haven't thay?

(ASSISTANT STATE'S ATTORNEY):

Objection.

THE COURT: Sustained. Disregard that question.

BY MR. KERPELMAN:

Q You have never been found guilty of a crime in your life, have you?

(ASSISTANT STATE'S ATTORNEY):

Objection.

THE COURT: Sustained. Disregard the --

BY MR. KERPELMAN:

Q You have been charged repeatedly

--

(ASSISTANT STATE'S ATTORNEY):

Objection, Your Honor. I --

MR. KERPELMAN: I haven't finished the question. Your former objection was sustained.

THE COURT: Mr. Kerpelman, stop; do not pursue that line of questioning, it is not relevant.

MR. KERPELMAN: Oh, thank you,

thank you. Okay. Of course, I respectfully disagree. For the record, I believe it is very relevant.

Your Honor, stop me if you want me to approach the bench, but I have a reason why I would like to suggest to the Court that it's totally relevant.

THE COURT: Thank you, sir.

MR. KERPELMAN: And that is the Supreme Court cases on selective prosecution and the Supreme Court cases on vindictive prosecution, both of which fit into this case beautifully.

THE COURT: Thank you, sir.

MR. KERPELMAN: Okay. Would Your Honor wish to reconsider the Court's ruling?

THE COURT: No, I do not wish to reconsider that and I am instructing you not to pursue that line of questioning.

When Mr. Cowles was cross-examined by the prosecutor, he was again questioned about the earlier incident in which he took two of his children from Maryland to California. At this point, appellant interjected and re-

quested to approach the bench. The request was denied. Appellant then announced, in the presence of the jury:

> All right. Well, the Court has prohibited us from bringing out the fact that Mr. Cowles was previously charged with () child kidnapping () and the case was dismissed. (Prosecutor's objections omitted) (emphasis added.)

The trial judge sent the jury out of the courtroom and told Mr. Kerpelman that he was in contempt of court. The judge withheld sentencing until the end of the Cowles trial which termineted later that day. The judge postponed sentencing for two days to allow appellant to consult with another attorney.

When the trial court reconvened, appellant sought another postponement of sentencing for eight or eleven days because the attorney he wanted to use would be unavailable until then. This request

was denied. Appellant was sentenced to five days in jail.

On appeal, appellant phrases the issues as follows:

> 1.(a) Did the Appellant in fact violate any order given by the Court, so as to be guilty of contempt? Was there an intent to be in contempt or a mere failure of a meeting of the minds of Court and counsel?
>
> (b) Is the record sufficient to sustain such a finding?
>
> 2. Was the Appellant denied his right to counsel?
>
> 3.(a) Was the prolix material supplied by the Court below, including its "Opinion and Order" and its "Supplemental Opinion and Order" a sufficient compliance with the mandatory language of Rule P3b, requiring
>
> > "Where a direct contempt is committed, the Court shall sign a written order to that effect. The order shall recite the facts..."(?)
>
> (b) Was the "Opinion and Order" and the (")Supplementary Opinion and Order" below so fraught with confusion

by intermixing conclusory (sic) statements with what may have been intended to be its "reci(ation of) of the facts" as to fail to meet the required standard of Rule P3b?

4. At the time of sentencing the Court had a pre-prepared finding which it read into the record after having taken testimony and after listening to "argument" or an "allocution"; did this pre-preparation vitiate the meaningfulness of the hearing so as to make the finding or sentence void?

5. Does the record show anywhere that the Appellant was "attempting" to cause a mistrial?" If not, is the judgment to be invalidated? Or was the Court's concern with this more surplusage?

6. Was Rule 4-233(a) (sic) (now 2-517 (a)) (sic) which sets forth that the grounds for objection "need not" be stated, of any relevance in this matter? If not, does the judgment become reversible?

7. Was the alleged contemnor punished for more than he was found in contempt for?

8. Or, equally improperly, for substantive or non-existent "antics" or "patterns of conduct?(")

9. Was the Court's anger at being found by Appellant to have mis-read a court order to the jury a possible or probable factor in its finding of of (sic) contempt a short time later? Since the mis-reading was the Court's sole and voluntary act, should the judgment be reversed?

1., 5., 6., 7., 8., and 9.

Appellant's first, fifth, sixth, seventh, eighth, and ninth issues can be consolidated. Each essentially challenges the sufficiency of the factual basis of the trial court's finding of contempt.

If a person knowingly disobeys a court order, he is in contempt of court. Weaver v. State, 244 Md. 640, 644 (1966). To be held in criminal contempt, as appellant was here, the trial court must be convinced beyond a reasonable doubt that a person has committed a contemptuous act. Murphy v. State, 46 Md. App. 138, 151, cert. denied, 288 Md. 740 (1980). Appellate

review of the factual basis of the contempt finding is limited to a determination of the legal sufficiency of the evidence. Id., 46 Md. App. at 152.

In the case at bar, there was sufficient evidence for the trial court to be convinced beyond a reasonable doubt that appellant had knowingly disobeyed one of its orders. The court had prohibited appellant from disclosing to the jury the fact that his client had previously been charged with child abduction and that the charges had been dismissed. Appellant's contention that he misunderstood the court's admonition is disingenuous. Appellant's disclosure of the forbidden facts to the jury was prefaced with his acknowledgment that the court had prohibited him from doing so.

Appellant argues that the trial court deprived him of his right to assistance of counsel when it refused to postpone sentencing a second time to accomodate appellant's chosen attorney. This argument assumes that appellant had a right to counsel. It overlooks the fact that appellant was punished for direct contempt. Md.Rule P1.a. As such, it was governed procedurally by Md. Rule P3. The trial court was thus authorized to impose a sentence summarily, with no hearing at all. Md. Rule P3.a. Any postponements granted appellant were gratuitous rather than as a matter of right.

Rule P3.a.'s provision for summary disposal of direct contempt issues is based on the notion that where the contemptuous incident occurs in the trial

All

~~st~~ances. Thu , it is unnecessary to

judge's presence, he has personal knowledge of the act and its surrounding circumstances. Thus, it is unnecessary to produce any evidence of conduct a hearing. State v. Roll and Scholl, 276 Md. 714, 734 (1973). In light of this, there is no need for the services of an attorney to protect the alleged contemnor.

3.

The trial judge filed an original opinion and order and a supplemental opinion and order. Appellant complains that these fall short of the standards required by Md. Rule P3.b. We disagree.

Md. Rule P3.b. requires the trial judge to file a written order stating the facts upon which a direct contempt citation is based. In the case at bar, the trial judge's supplemental opinion and

order made clear that the appellant's contempt citation is based on his announcement to the jury of a fact which he had been prohibited from bringing out. The trial judge obviously had personal knowledge of the incident.

Unlike appellant, we do not find the opinion and order or the supplemental opinion and order to be "prolix material" or "fraught with confusion." The trial judge's description of Mr. Kerpelman's many instances of abnormal behavior during the trial serves to supplement the judge's findings with regard to the intent and purpose of appellant's contemptuous act. It is consistent with Md Rule P3.b.'s purpose of establishing a record for appellate review of the contempt finding.

Appellant's final complaint is that he was denied the opportunity to make a meaningful argument at the sentencing proceeding. This is based on appellant's perception that the trial judge read a decision which he had prepared prior to appellant's argument. According to appellant, this shows that the trial judge did not consider his argument.

Because the trial judge was authorized to proceed summarily, appellant did not even have an absolute right to make a meaningful argument. But assuming arguendo that he had such a right, he has not demonstrated a deprivation. Even if the trial judge did read a prepared statement, it does not mean he failed to consider appellant's argument. It is equally probable that the judge simply

was not swayed by appellant's argument.

JUDGMENT AFFIRMED.

COSTS TO BE PAID BY APPELLANT.

(ii)

Opinion and Order of the Trial Court

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, MARYLAND

IN RE: :

THE MATTER OF LEONARD J. KERPELMAN : MISC. PET. 6873

OPINION AND ORDER

To judge another's conduct is an awesome responsibility. It is a sad day, and a distasteful role that the Court has to assume, when it must punish a member of the bar. The conduct and antics of Leonard J. Kerpelman exhibited in this

courtroom during the trial of State of Maryland v. Clifford M. Cowles, Criminal No. 41860, was such that for a Court to ignore the same would amount to a dereliction on the part of this Court.

Before a jury of citizens chosen to hear this case, the jury was subjected to a course of conduct by Mr. Kerpelman which was so obnoxious that the dignity of the Court, and the orderly administration of justice was castrated.

It was apparent to the Court from the outset of this trial, that the contemptor purposefully attempted on numerous occasions to cause a mistrial by his own conduct. Many sarcastic remarks were directed to opposing counsel, and baseless accusations made as to the motives of the State in this prosecution. It was even suggested by Mr. Kerpelman, in

front of the jury, that the competence of the judge was suspect.

Mr. Kerpelman was warned by the Court about his decorum and behavior to the point where he was threatened with contempt unless he ceased his antics. The contemptor chose not to heed the Court's admonitions, but continued with behavior that can only be described as despicable. Finally, the Court was required to excuse the jury and adjudicate Mr. Kerpelman in direct criminal contempt of this Court.

Therefore, it is this 2nd day of April, 1987,by the Circuit Court for Montgomery County, Maryland,

ORDERED, that adjudication of contempt of Leonard J. Kerpelman on March 31, 1987 stands, that said contempt was in direct violation of the Rule of Professional Conduct, Rule 3.5 (8) adopted by the Maryland Court of

Appeals effective January 1, 1987; and, it is further,

ORDERED, that Leonard J. Kerpelman be, and is hereby, sentenced to a period of incarceration of (5) days at the Montgomery County Detention Center.

JUDGE PAUL H. WEINSTEIN
Circuit Court for Montgomery County, Maryland

((b))

SUPPLEMENTAL
OPINION AND ORDER

After repeated warnings throughout the course of this trial to conform his behavior to proper courtroom decorum, Leonard J. Kerpelman committed direct contempt of court during the second day of State of Maryland v. Clifford Cowles, Criminal No. 41860. During the cross-examination of the Defendant, Mr. Kerpelman asked to approach the bench. This request was denied. Mr. Kerpelman then took this opportunity to try and bring to the jury's attention the fact that the Defendant had previously been charged with child kidnapping and the charges had been dropped. Defendant's counsel knew this action was improper and had specifically been admonished not to raise this issue in the jury's presence.

This Court's refusal to allow Mr. Kerpelman to approach the bench during a jury trial did not give counsel "carte blanche" to say anything he wanted in the jury's presence. According to the Maryland Rules of Procedure, a proffer is not necessary to preserve an issue for appeal, all that is required is for counsel to object. See, Maryland Rules 4-322(a). Given Mr. Kerpelman's prior misconduct throughout the course of this trial, and the Court's repeated admonitions, the action taken by Mr. Kerpelman in this instance subjected him to a finding of direct criminal contempt of court.

Before concluding, the Court feels compelled to state that though Mr. Kerpelman has been cited for only one specific instance of contempt, this particular incident must be viewed in light of the Court's repeated admonitions in response to Mr. Kerpelman's conduct. Mr. Kerpelman interrupted

the orderly procession of the trial on many occasions with rude, angry and spiteful remarks. As examples, I will lay out below some of the incidents which took place. Since it is not possible to accurately describe Mr. Kerpelman's outrageous, impolite style I am incorporating the Court's electronic recording of the entire proceeding to illustrate the mannerism Mr. Kerpelman displayed in Court.

During the very beginning of the Assistant State's Attorney's opening statement, Mr.Kerpelman asked to approach the bench. At the bench, he moved for a mistrial because the prosecutor had addressed the foreperson of the jury by her last name. He declared this tactic to be "wrong, incorrect, unethical and an unlawful thing to do." In his opening statement, Mr. Kerpelman asked

the Assistant State's Attorney to borrow her easel and paper. The Assistant State's Attorney refused and he then asked the Court for an easel. When told that the Court had no easel and paper, he asked for a blackboard. He then said, in the presence of the jury, that in most courtrooms you get a blackboard, chalk and paper and "courteous counsel helping you." A blackboard was provided to him, but when it was first rolled into the courtroom it did not have chalk. He then wondered aloud, dripping with sarscsm, if he was going to be required to use his pocketknife to carve his writing on it. Mr. Kerpelman claimed that this case represented a vendetta by the State's Attorney's Office and that he would show that this case had probably been handled differently from any other case in the history of probably 900 years of Anglo Saxon law. After being admonished by the

for this remark, he wanted to approach the bench to make a "motion to withdraw a juror." When the Court appeared quizzical, he responded in an obnoxious, arrogant voice that a motion to withdraw a juror is "the secret way we counsel have of saying we want a mistrial without informing the jury ...it's the form that's been used for the last 500 years." When his request was denied and a request to appraoch the bench was denied, Mr. Kerpelman stated at least twice that the court was "unevenhanded." He then proceeded to wonder how he may have been prejudiced because the jury always regards the Court as God, "not knowing that this member of the bench was recently promoted from the District Court and has not been on this bench very long, (and) is to a certain extent not practiced in its rules and customs." Later in his addressing the jury, Mr. Kerpelman hoped the jury would be able to decide the case in a detached

fashion, even in spite of the "remendous friction" between the judge and Defendant's counsel. For the record, this Court wants to make clear that in its opinion Mr. Kerpelman created any friction that may have existed in the courtroom. Here, this Court refers to the tape of the proceedings to illustract Mr. Kerpelman's impolite behavior and antics during "voir dire" and the prosecution's opening statement. As difficult as it may be to create serious disturbances during "voir dire" and one opening statement, Mr. Kerpelman did so, as the tape shows.

Continuing with his opening statement, when Mr. Kerpelman began to use the blackboard provided by the Court it wobbled slightly (this Court has never had any difficulty with it prior to this). While writing, he wondered and hoped that "this wasn't done purposefully, but this almost

isn't a usable blackboard."

Throughout the body of the examinations prior to being adjudged in contempt, Mr. Kerpelman continuously made frivolous motions for mistrials and improper motions to be withdrawn as counsel from the case, all in front of the jury. As an example, at one point the Court pointed out that a file was on the clerk's desk in front of where Defendant's counsel was standing. Because the file was not directly in Defendant's counsel view, he made a motion for a mistrial.

Concluding, this Court cannot overemphasize the rude, arrogant and disgusting manner in which Mr. Kerpelman conducted himself before the jury, State's counsel, officers of the Court and the Court itself. For reference, this Court cites the electronic recording filed herein.

JUDGE PAUL H. WEINSTEIN
Circuit Court for Montgomery County, Maryland

Dated:
April 2, 1987

Judgment Sought to Be Reviewed

MANDATE

Court of Special Appeals

No. 464, September Term, 1987

Leonard J. Kerpelman
v.
State of Maryland

JUDGMENT: December 21, 1987, Per Curiam. Judgment affirmed. Costs to be paid by appellant

January 20, 1988: Mandate issued.

STATEMENT OF COSTS:

In Circuit Court: for MONTGOMERY COUNTY
6873

Record.....	40.00
Stenographer Costs.....	633.00
* Total *	673.00 *

In Court of Special Appeals:

Filing Record on Appeal.....	50.00
Printing Brief for Appellant	192.00
Portion of Record Extract-- Appellant.....	282,80
* Total *	534.80 *

STATE OF MARYLAND, SCT:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Special Appeals in testimony whereof, I have hereupon set my hand as Clerk and affixed the seal of the Court of Special Appeals, this Twentieth day of January A.D. 1988

Howard C. Freeman
Clerk of the Court of
Special Appeals

COSTS SHOWN ON THIS MANDATE ARE TO BE SETTLED BETWEEN COUNSEL AND NOT THROUGH THIS OFFICE.

(iv)

Other Appended Materials

((a))

Extracts from "Appellant's"
(Petitioner's) Affidavit Below

APPELLANT'S "SUPPLEMENTARY
AFFIDAVIT"

(From His Affidavit, Verbatim)

Answer to the Substantive Complaint

Judge Weinstein's "Opinion and Order" consists of a first page setting forth his version of what the Affiant understands to be the substance of the complaint against him.

This is followed by pages 2-4 in which a huge volume of background material is referred to offhandedly and loosely. This later part, the Affiant feels, must be answered, even though the generality of the language referring to it makes it necessary to encompass large amounts of material and, perforce (the two volume transcript runs to approximately 350) pages to omit much else. The prolix discussion of all this by the Affiant, has therefore been relegated to the latter part of the Affidavit --in a "Supplement".

This present section seeks to meet what is understood to be the charge.

(Answers to Trial
Court's "Examples")

Pages 2, 3 and 4 of Judge Weinstein's "Supplemental Opinion and Order" are all far outside the act which caused the Appellant to be cited for contempt, and are therefore believed irrelevant to an appeal therefrom.

Nevertheless because of the effect of those pages on the nisi prius court's credibility, the Appellant addresses them.

Judge Weinstein in his "opinion and Order" (there is no "Finding" which has been served on this Affiant as required by Rule P3, only the "Opinion and Order", and the word "Opinion" is highly descriptive as opposed to the word "fact") alludes to what he would have the court believe are certain horrors. He uses them to illustrate conduct which he calls "disgusting", "rude", "arrogant", of

course, contemptuous, and also "obnoxious", angry", "spiteful", "outrageous", "impolite" and "impossible to accurately describe".

This last may have been because Judge Wesinstein may have finally exhausted the pages of his thesaurus, but nevertheless let us examine the credibility of each of the examples he gives. I deny that the things he uses as examples are examples.

1. Addressing a Juror by Name.

> Weinstein is offended that the affiant requested a mistrial after the State's Attorney had addressed the Foreperson of the jury by name. At the bench, the Affiant, Weinstein complains, "(called) this tactic wrong, incorrect, unethical and an unlawful thing to do."
>
> The fact is that that is correct. The State's Attorney's tactic was "wrong, incorrect, unethical and an unlawful thing to do." Where has Weinstein been practicing law? On the moon? See Busch, "Law and Tactics in Jury Trials", P479, p.755.
>
> The citations given are
>
> Schroeder v. Wells, 298 SW 806 (Mo.);

Orchin v. Ft. Worth Poultry and Egg, 43 SW 2d (Tex.)

See also 1908 Canons Sec. 23.

2. The Breakaway Blackboard.

Counsel has practiced in many courtrooms not only in Maryland, but throughout the country. He has never been in one without some forensic display materials. In this courtroom there were none.

Counsel was naturally surprised. He politely asked to borrow an easel and some display board which the State was using. In unmannerly fashion, this was refused. The Court itself contended it had no materials to provide (TR. Vol. I, p. 26). Counsel (Affiant) asked for a blackboard. When it came it shook.

Weinstein expresses apparent (to the Affiant) outrage that counsel should comment on the situation by criticizing the State's discourtesy; and when he found he was provided a blackboard but no chalk, (remember bricks without straw? See Exodus, King James version) Weinstein, however, perhaps never having tried to make bricks without straw, or perhaps write on a blackboard without chalk, seems to be equally outraged that counsel instead of remaining meek and accepting of his inability to do his job for his

client, becomes frustrated, and chagrined. (This is on p. 3.)

(Go to p. 4, where) Weinstein now claims the blackboard wobbled slightly!

THE BLACKBOARD FOUGHT BACK AT THIS POINT AND SUBSEQUENTLY FULLY COLLAPSED.

In pieces.

A large section of debris, large enough in fact to brain a Saturday wrestler, it is recollected and therefore alleged, fell to the courtroom floor right at the feet of the Forepoerson of the jury.

Did Judge Weinstein forget this in simply mentioning the "wobble" in his "Opinion"? Did he not have a duty to mention it to this Court? As citation for the event see Transcript of Case M6873, April 2, where counsel (Affiant) states at p. 21:

> "...(M)y client was put in the embarassing position of having a blackboard that collapsed before the jury's eyes."

Which transcript statement Weinstein did not in the Record nagate. Did he forget that when he states in this Record that "(The blackboard) wobbled slightly"?)

Counsel is ready to prove extrinsically that the blackboard collapsed.

3. Was It Strange to Move For a Mis-Trial When the Judge Suddenly Began to Deliver Jury Instructions During Opening Argument?

In opening argument counsel informed the jury that he would show that the case had been handled very differently from the usual such case. In Mary land the jury are still judges of the law and counsel intended to argue the known legal principles of "vindictive prosecution" and "selctive prosecution", both valid arguments; and counsel had intended to call in the Defendant's behalf, State's Attorney Sonner and Deputy State's Attorney Lehr to show factually the believed and alleged uniqueness of this prosecution of the Defendant. Counsel believed then, and believes now, that these are valid factual legal defenses to the charge laid.

But at this point, Judge Weinstein does admonish the Affiant. He says "We are not going to get into 'emotions' in this case and I am telling you... right now, stick to the facts in this case. Tell the jury what the evidence is that you intend to show and proceed from there."

Counsel does not see where he was 'get(ting) into 'emotions'". Counsel believes he had facts of vindictive andselective prosecution and he intended

to present them. Much later he was prevented from doing so by the Court ruling that the evidence was not admissible!

However, before the admonishment against "not get(ting) into emotions in this case and ...to stick to the facts (p. 29)..." Weinstein suddenly begins giving a jury instruction! During opening argument. Counsel believes it is fair to characterize it so.

See p. 28. The jury are informed as a matter of law for them to follow, apparently, that "this is not a case involving any vendetta." This before any evidence has been presented or proferred. Weinstein goes on for eight more full lines of typed text in the exact form of a jury instruction.

Counsel was amazed, and because the Court had spoken to him hostilely, unprovokedly so, and which counsel felt was most unfaorable, and threatening to his client's welfare, counsel most naturally moved for a mistrial. He does not apologize for it now, or ever.

4. Was It Strange for Counsel to Be "Quizzical" When the Court Did Not Understand His Form and Usage?

Counsel has long been used to form "I move to withdraw a juror" as a request or motion for a mistrial. It is

referred to in Busch "Law and Tactics in Jury Trials" at p. 201. Counsel believes he has seen it everywhere. He heard it in law school many years ago. He has heard honored fellow-practitioners use it as a commonplace. Coming on the heels (Tr. Vol. I, p. 29) of the Court's suddenly giving a jury instruction during opening argument, yes, counsel became "quizzical". Yes, in fact doubtful, of the store of trial knowledge which he felt might be lacking. He does not deny that his reaction may have been one of disdain at this point; he does deny that he intended to be either "obnoxious" nor used an "arrogant voice"; he does not believe he was, in fact, "obnoxious" nor used a voice which was "arrogant", though this is quite an overbroad term and he does not know what Judge Weinstein's subjective definition of it is. He does believe and so alleges that he does not agree with Weinstein's definition, and he does believe that an ordinary, reasonable man observing would agree with Affiant. Affiant therefore so alleges.

Counsel was refused his mistrial; he had been lenghily criticized before the jury, he had been denied an easel-board, the blackboard he had been provided by the judge had collapsed into dangerous flying pieces. Foster, the Assistant Attory was permitted to approach the bench (p. 26). He, however, had

been refused or ignored three times in such a request by the time the trial got to only p. 28 (21, 25, 27). The State's Attorney had been permitted to, unremonstrated, address a juror by name (19), to unreatrainably make an argument which counsel believed was knowingly a misleading distortion (21), to falsely use words of art (p. 28 & 24) namely "personally appear" and "participated personally"; and counsel's attempt to correct this was ignored (p. 25). Is it really strange then, that at p. 31, counsel, his back figuratively to the wall in saving his client, accuses the Court of being "unevenhanded"? It was being unevenhanded. To not so-comment to the jury, in the calmness of further reflection, might well have been a dereliction by counsel.

To protest the inability to make a record at the bench, and having been subjected to these things which he fears were impressing the jury irretrievably against his client, was it inexcusable to try to have the jury consider that thejudge is not God? It seemed to counsel fair under the circumstances to even go so far then as to inform the jury of the Court's limited Circuit Court experience so they would not believe he was God.

And this, counsel believes is the law! The Court is not God, and the jury, not the Court, and not God is the judge of what the law is. Yes, counsel believed he had a right and

in fact an obligation to seek to have the jury understand, at all stages, and at this stage, both its power and its function.

And the Court had made counsel --and consequently his client -- beleaguered.

5. "Mr. Kerpelman Created Any (All!) Friction That May Have Existed".

Counsel denies that the record set forth in 3 above shows that. He defends his acts as reasonable in the protection of his client when forced by the Court to do so before the jury.

See the discussion below, also, as to "Rule 4-233".

6. The Court Cites the Voir Dire (which Counsel Ordered But Was Not Delivered) and the State's Opening to Show Counsel's "Impolite Behavior and Antics ...As the Tape Shows".

Counsel states he does not believe he protected his client impolitely.

And that he does not know what an "antic" in the context of a jury trial may be. It is certainly, he believes, an unfair word to use as one knows not what to reply to.

Is it a bow tie when others may wesr four-inhands?

Is it a refusal to sit quietly by while the State's Attorney pretends that an "appearance" before the California court means only a physical presence.

Is it a reasonable request for a mistrial when a Court is believed to have been openly hostile to one's client or to have given a seriously prejudicial statement of the law?

Was the demand to re-seat a uniformed deputy sheriff away from the defendant to avoid giving the jury a negative impression an "antic"? (Vol. I,p.16).

Counsel does not know.

7. "Frivolous" Motions for Mistrial.

One has been discussed in detail. (See 39-40) Other motions for mistrial appear throughout the transcript. Counsel did not intend and does not believe that any of them were "frivolous". Some are listed. All objected to events which occurred in the presence of the jury.

A. Tr. Vol. I, p. 32. Court brings out "background" of counsel --that he was suspended from practice".

B. Tr. Vol. I, p.33. The Court --after a multiplicity of previous occasions --criticizes

counsel before the jury.

C. Tr. Vol. I, p.56. Court accuses counsel of "making unwarrant(ed) objections".

D. Tr. Vol. I, p.97. Counsel believes Court implied he was being overbearing or oppressive to a witness.

E. Tr. Vol. I, p.106. Court tells jury it is <u>not</u> the judge of the law.

F. Tr. Vol. I, P.133. A contradictory ruling appearing to favor the state.

G. Tr. Vol. I, p.135. Court tells the jury there was consent to the California divorce decree but not the custody portion of the decree. An extremely harmful error. Counsel presently believes this statement cannot be excused in any way and that it is almost inconceivable that the jury would not have found otherwise at the close of the case. Certainly it would be just about impossible to say that there was no evidence from which the jury <u>could</u> have found this way!

And etc.

* * * * * *

8. The Court's Admonitions.

Judge Weinstein speaks (p. 2 of his Supplemental Opinion) of "the Court's repeated admonitions".

Counsel has carefully gone through the voluminous transcript of the Cowles case. While not completely certain that this is a completely exhaustive list, counsel believes these are all or nearly all of the admonitions:

A. Vol. I, P.28. (During opening argument) The Court prevents counsel from arguing "selective prosecution". The reading indicates it applied only to the opening argument to the jury, it is believed and therefore alleged.

B. Vol. I, p.51 on "side comments". Nothing to do with the contempt citation.

C. Vol. I, p.67. "I'm going to warn you once right now. Either conduct yourself properly, or I will deal with it ..." Counsel then demanded an explanation of what that meant. The Court explains that the cross-examination must be based to the direct examination. "Limit it to that." Nothing more. Nothing to do with the contempt citation, apparently.

(Counsel had engaged the Court in discussion over a limitation on cross-examination which counsel did not understand the Court's point on, try as he would.)

(See discussion below on "Withdrawing...".)

D. Vol. I, p.153. On "side comments" and on "caustic remarks regarding the parties... . Now, one more slip and I will deal with you in another manner."

E. Vol. II, p.38. The incident in question, which is discussed above in the main body of this Affidavit.

F. Vol. II, p.65-66 against "pursuing that line of questioning, it is not relevant.", concerning defendant having been formerly charged with a crime. It was this admonition that was further discussed from the trial table, the Court having delcined to have counsel approach the bench, and the Court made no objection to this discussion based on Rule 4-233(a) which has been referred to above.

G. Vol. II, p.4 on "outbursts". The most interesting "admonition". The Court took umbrage at counsel's objection to the judge making an

oral motion (as counsel) on behalf of an absent witness who had filed no motion. The fact that the "movant" was Judge Miller does not disentangle the puzzle.

"MR. KERPELMAN: By you? If Your Honor please, this is most unusual."

Apparently the Court regarded this as an "outburst".

When Kerpelman protests that the term "outburst" is vague, the Court replies "Your conduct throughout this trial has been despicable". This may be an admonition not to be "despicable". All, one would think, would agree, that this "admonition" is not related to the incident of mentioning the child abduction acquittal (see above).

9. "Improper Motions to ...Withdraw...As Counsel".

There were a number of such requests, perhaps three before the citation for contempt. Counsel believes that each was intended out of serious concern for his client's welfare and his own safety as well.

For example, at Vol. I, p.63, immediately following a very difficult-

to-understand admoniton by Weinstein (p.67) the Affiant states "Your Honor, I want to get out of this case because I do not want to be sent to jail for contempt of court for doing my duty, and I respectfully ask the Court to permit me to withdraw from this case. I am talking about where the Court pointed a finger at me, raised its voice and said, 'Kerpelman, ...do not do so and so.' I have no idea what the Court wants me to do or not do. I cannot conduct my defense. I want to get out of this case. ...I want the record to show that it is my impression that if the Court should rule 'sustained' I will be fined or sent to jail for contempt of court and I cannot conduct this case under that circumstance. The Court looks quizzical. Let the record show that. To me, it is more than a simple puzzle. It is a very complex puzzle. The Court has prevented me from doing any number of things that I have customarily done for thirty years in defending cases. The Court has indicated that it is improper."

The request was denied.

The requests which were made after the citation for contempt were made to protect the interests of the client, whose attorney was thereafter much in fear, in a high state of anxiety and who felt unable to offer further services to the client in a

clear-thinking fashion. It is respectfully stated that the Affiant believed each such request was called for in his client's reasonable interests by the then tense surrounding circumstances.

10. Except That By Referring In General Terms to the Affiant's General Conduct In the Trial, Weinstein Has Required Counsel to Do Many Hours of Labor in Drawing Up This Voluminous Reply to the Exceedingly General Charges Made in Pages 2 through 4 of the "Supplemental Opinion and Order".

In the course of these, he has felt himself to have been terribly insulted.

To assist in explaining the insult, and although he believes it is probably irrelevant, the Affiant says most respectfully, that he has drawn out of the transcript just a few of the statements which the Court has made, which he believes, and therefore alleges most detached observers would call discourteous, or even rude.

Some of these are:

A. Vol. I, p.52 (sarcasm) then "Have a seat").

B. Vol. I, p.54 ("Sit down...").

C. Vol. I, p.55 (Sarcasm).

D. Vol. I, p.58 (Sarcasm).

E. Vol. I, p.58 (Again "Sit down...".

F. Vol. I, p.59 ("Have a seat. It is overruled.").

G. Vol. I, p.80 (Accuses counsel of "taking" the "evidence").

H. Vol. I, p.146 ("Are you not prepared?").

I. Vol. I, p.147.

J. Vol. I, p.167 (Apparent sarcas, et cetera).

K. Vol. II, p.23 (Mockery, et cetera).

11. The Hidden File Incident (Vol. II, p.48).

The Court says that "because a file was not directly in defendant's counsel's view, he made a motion for a mistrial."

Quite naturally.

At 47, the Court had stated, in the presence of the jury, "It's right there in front of you...". This was right after there had been a dispute between counsel and the State's Attorney as to whether in fact the file was "right there". The Court's statement

indicated to the jury some highly negative assessment, it is believed, of counsel's veracity; and he therefore, justifiably, he believes, moved for a mistrial. --For the fact was that the file was not within his sight, but hidden behind the high carpentry construction of the clerk's desk.

12. Failures to Rule Promptly, an Incidental Matter.

Perhaps, under the circumstances, since the Court has referred to Rule 4-2 33(a) and that Rule in addition to speaking of objections and appeals, also states that objections "shall" be ruled on by the court promptly, it might therefore be pertinent to point out just a <u>few</u> if the times when the court had to be requested more than once by counsel to rule on an objectionor motion in the course to rule on an objection or motion in the course of the case. Again, by way of illustrating the background and "ambiance" of the case:

A. Vol. I, p.133, p. 168 (three demands), p.62, 63, 133, 135, 168 (three times). This is a sample. There are more.

(Appellant's Oath Below)

AND THE AFFIANT, makes oath, according to the Maryland Rule on oaths, on the 26th day of May, 1987, that the matters set forth hereinabove, are, on information and belief, true and correct.

LEONARD J. KERPELMAN
Affiant
2403 W. Rogers Avnue
Baltimore, Md. 21209
(301) 367-8855

CERTIFICATION OF MAILING

I HEREBY CERTIFY that on this 27th day of May, 1987, a copy of the aforeging was mailed to Andrew Sonner, Esquire, Judiciary Building, Rockville, Md. 20850.

LEONARD J. KERPELMAN

(Last Page of Affidavit, Below)

An Objection

And the Affiant objects to the reference made in the Supplementary Opinion and Order as follows:

> "For reference, the Court cites the electronic recording..." (P.4)

This is in no manner, specific enough to reply to. Counsel, it is respectfully pointed out, is no mind reader. However, the Affiant also states his belief, and he therefore alleges, that that non-specific and subjective statement is not a true assement and observation of what occurred which would be upborne by either his own belief or that of a reasonable observer. As to the voir dire only, however, he makes this statement on recollection and belief. He ordered the electronic recording but did not receive it; he ordered the transcript but did not receive it. He believes his representation there followed that in the rest of the case, and was proper --he really believes entirely proper but is at a disadvantage without the transcrimpt - under the circumstances. Moreover, he has not been charged, he believes and therefore alleges, for his representation of his client during the voir dire.

He suggests that statement of the Court is irrelevant. Sworn to May 26, 1987. Leonard J. Kerpelman; copy to Mr. Sonner

((b))

EXTRACT OF PROCEEDINGS,

CONTEMPT CASE

((b))
Extract of Proceedings,
Contempt Case Below

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, MARYLAND

IN RE: LEONARD KERPELMAN	:	Miscellaneous Petition No. 6873

Rockville, Maryland
April 2, 1987

WHEREUPON, Proceedings in the above-entitled matter commenced.

BEFORE: THE HONORABLE PAUL H. WEINSTEIN,
Judge

APPEARANCES

FOR THE STATE:

ANDREW SONNER, Esq.
Office of the State's Attorney
50 Courthouse Square
Rockv'lle, Maryland

FOR THE PLAINTIFF:

LEONARD J. KERPELMAN, Esq. (Pro se)
2403 W. Rogers Avenue
Baltimore, Maryland 21209

Opening Remarks: Page

Leonard J. Kerpelman, Esq. (Pro Se) 6

WITNESS For the Defendant:	DIRECT	CROSS	REDIRECT	RECROSS
Judge Leonard Ruben	9	---	---	---

Comments by:	Page
Leonard Kerpelman, Esq.	11
Andrew Sonner, Esq.	14
Sentencing - Judge Paul E. Weinstein	14
Further comments and requests Leonard Kerpelman, Esq.	16

P R O C E E D I N G S

THE CLERK: Criminal No. 41860, The State of Maryand versus Clifford Cowles, specifically Leonard J. Kerpelman.

THE COURT: Specifically Leonard J. Kerpelman.

(Pause)

THE COURT: Mr. Kerpelman?

MR. KERPELMAN: Yes, Your Honor?

THE COURT: With respect to the issue in this case, I will hear you on the matter of punishment. I have already adjudicated you in direct criminal contempt of this Court during the trial of the State of Maryland versus Clifford M. Cowles.

MR. KERPELMAN: If Your Honor please, on that matter I have engaged the services of Mr. Eugene Zoglio.

THE COURT: He called me yesterday, Mr. --

MR. KERPELMAN: And he is unable to appear.

THE COURT: He called me yesterday and I

advised him that at your request the matter was set this morning at 9:30, because of a conflict you had yesterday, and we are going to proceed this morning, Mr. Kerpelman.

MR. KERPELMAN: If Your Honor please, the sequence was that the Court wished to set the case yesterday.

THE COURT: Yes, sir.

MR. KERPELMAN: I had two matters in Annapolis. The Court very courteously set it for today. At that time the Court said something about retaining counsel.

THE COURT: I said that I thought it might be a good idea for you to converse or consult with counsel.

MR. KERPELMAN: Indeed, indeed. It was a suggestion that I thought was important. I conferred with Mr. Auglio. He is very anxious to represent me. I am very anxious to be represented by him. I know Mr. Auglio very well. He is an extremely competent attorney. I feel that I need his services.

He would be available, in a very short time, if Your Honor please. He would be available on the 10th, or on the 13th, and--

THE COURT: One of the problems, Mr. Kerpelman, and not to interrupt you, is when the Court adjudicates somebody for summary contempt, which I did on the 31st day of March, it is most important to the administration of justice that the penalty and punishment be imposed in a substantially short period of time thereafter.

I gave you, at your request, an extra day. I do not intend to continue this matter any further. I intend to proceed this morning. I don't even know whether or not you have a right to counsel, but I wanted to give you that opportunity in case you wanted to get one.

MR. KERPELMAN: I do wish.

THE COURT: All right.

THE COURT: All right.

MR. KERPELMAN: And Your Honor is giving it with one hand, and taking it back with the other.

THE COURT: No, I am not either. I gave you from Tuesday until this morning to get counsel.

MR. KERPELMAN: I was unable to arrange counsel that very brief period of time.

Nevertheless, I do wish to present one witness on the question of the proper way of perhaps purging the contempt. I have already apologized to the Court.

THE COURT: I don't believe you can purge this type fo contempt, Mr. Kerpelman. At least in my reading of the law, it doesn't indicate that you can purget this type of contempt.

MR. KERPELMAN: If Your Honor please, I would nevertheless like to call --

THE COURT: Certainly, I am going to

permit you to call whomever.

MR. KERPELMAN: --Judge Ruben. If your Clerk would telephone down there, he is ready to come up in response to my subpoena.

THE COURT: All right.

MR. SONNER: If it please the Court, Andrew Sonner on behalf of the State. Judge Ruben was here, and he asked me to send somebody down for him when the hearing began. We have

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MR. KERPELMAN: Thank you.

THE COURT: Do you have any questions?

MR. SONNER: No, Your Honor, No questions.

THE COURT: Thank you, sir.

THE WITNESS: May I be excused, Your Honor?

THE COURT: Yes, sir.

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: Do you have any other witnesses, Mr. Kerpelman?

MR. KERPELMAN: No, Your Honor, I wanted to show, as an example of the fact, that ordinarily I conduct myself in an appropriate manner.

THE COURT: All right.

MR. KERPELMAN: I would also like to call the Court's attention to the fact that in this case, where I was cited for contempt, that the contempt resulted from a mistake on my part. I want Your Honor to know that.

That when I came in on Tuesday I realized that I was being --I was finding it difficult to handle all the difficulties in this case. I had told myself before I came in to be very discrete, and very reserved, and obedient to the Court's order.

At the point at which this happened, as Your Honor recalled, a matter came up and I

requested to a proach the

* * * * * *

that you believe that that is the only reason that you were found in contempt of Court, do you?

MR. KERPELMAN: Well, Your Honor, that is the only admonition that I can think of that was received by me that would have been violated.

Now, my understanding of contempt law, and if I was wrong it would have contributed to the difficulty that I have caused here, is that the Court warns you, and then you avoid what the Court warned you about.

Now, if Your Honor please, what the Court had warned about that was in my mind, at that time, was only about presenting evidence on this matter, and I believed that that was the Court focus when the Court, I thought, instructed me that nevertheless

that was being waived, and I should make the statement into the record from the trial table.

I had not meant to violate any Court admonition or injunction, or indication of what was not to be done. That was my only knowledge of what was going on at that moment.

If Your Honor please, it was in the throes of a quickly moving trial, where the parties had been in trial late the day before. As I explained to the Court at the time of the citation, I had been up quite late trying to design a set of reasonable jury prayers.

I had difficulty getting them typed. I finally had to present them to the Court, very embarrassedly, in written fashion, because my secretary wasn't available when I had them finished, which was close to --well it was a late hour.

I was quite cautious about offending the Court with that, because the Court had specifically said, "Mr. Kerpelman, I want these typed and on my desk at 9:30 the next morning," which was reasonable, and I was unable to do it.

So that I was under quite a strain and under a good deal of distress. Again, I apologize to the Court for all of that. I am not superhuman. I wasn't able to just go along with perhaps, some signs of fatigue.

Nevertheless, if Your Honor please, I misunderstood the Court's direction when the contempt citation occurred.

THE COURT: Thank you. Mr. Sonner.

MR. SONNER: May it please the Court, the position of the State's Attorney in these proceedings is not clear, as to the State's --

THE COURT: I don't think you have any position.

MR. SONNER: I that is the situation, Your Honor, the State's Attorney has nothing to say.

THE COURT: Thank you. Mr. Kerpelman, perhaps you haven't read the rules of professional conduct recently, as promulgated by the Court of Appeals, effective January the 1st, 1987. More particularly Rule 3.5 paragraph number, in paren (8).

I have reviewed the tape of the trial in this matter, as well as the actions I took for this Court on the 31st day of March.

The Judge and others' conduct is an awesome responsibility. It is a sad day, and distasteful role that the Court has to assume when it must punish a member of the bar. The conducts and antics of Leonard J.Kerpelman exhibited in this Courtroom, during the trial of the State of Maryland versus Clifford M. Cowles, was such that were a Court to ignore the same would amount

to a dereliction on the part of this Court.

Before a jury of citizens chosen to hear this case, the jury was subjected to a course of conduct by Mr. Kerpelman which was so obnoxious that the dignity of the Court, and the orderly administration of justice was castrated.

It was apparent to the Court from the outset of the trial, that the contemnor purposely attempted, on numerous occasions, to cause a mistrial by his own conduct. Many sarcastic remarks were directed to opposing counsel. Baseless accusations made as to the motives of the State in this prosecution.

It was even suggested by Mr. Kerpelman in front of the jury, that the competence of the Judge was suspect. Mr. Kerpelman was warned by the Court about his decorum and behavior to the point where he was threatened with contempt unless he ceased his antics.

The contemptor chose not to heed the Court's admonitions, but continued with behavior that can only be described as despicable.

Finally the Court was required to excuse the jury, and adjudicate Mr. Kerpelman for direct criminal contempt of this Court.

MR. KERPELMAN: Your Honor, may I respond?

THE COURT: Just a moment. Therefore, it is this 2nd day of April, 1987, by the Circuit Court of Montgomery County Maryland, ordered that the adjuciation of contempt of Leonard J.Kerpelman, on March 21st, 1986 stands.

That said contempt was in direct violation of the rules of professional conduct, Rule 3.5(8), adopted by the Maryland Court of Appeals, effective January the 1st, 1987.

It is further ordered, that Leonard J. Kerpelman is hereby sentenced to a period of incarceration of five days at the Montgomery County Detention Center.

I will hear from you, Mr. Kerpelman.

MR. KERPELMAN: Your Honor, at this allocution I was not aware actually that the Court was going to --I was not informed that the citation was for a course of conduct.

I thought that I had been cited --this, if Your

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children who love him and are being well taken care of.

As I expected when the case was over, the Court indicated to this Defendant, that he would be able to walk out of the Courtroom, as I understood it, if he turned over the children. This was a criminal case, being used for a civil purpose, as I most respectfully say, under that coloration, according to my understanding of what happened.

THE COURT: We are talking about your conduct in this trial!

MR. KERPELMAN: Exactly. Your Honor got me off the track. Your Honor did not tell me I was coming here today to defend a pattern of conduct. Nor did Your Honor, respectfully, admonish me that before citing me for contempt.

If Your Honor please, I think that that was not fair. Whether it is in keeping with the law of contempt of not, it wasn't fair.

We came in here and Your Honor did not make any admonition which I could recognize, which was to adhere to some kind of a pattern of conduct. When one is trying a case before a jury, one must address the jury; keep their psychology in mind.

One must address the Court; keep its' psychology in mind. One must keep in mind the overbearing --excuse me, that is entirely the wrong word - overreaching fact of the Court's influence on the jury just by raising

want to overstate the record, to make objections from the trial table.

Your Honor, that is not the way to maintain a neutral jury, because they are going to then hear things that are more properly not to be heard, because they are irrelevant. That is the purpose of Bench Conferences. But Your Honor has the discretion.

Having been drawn into that, then Your Honor pointed at me and said, don't, in effect --I am not quoting --don't come to the Bench. I promptly made my objection for the record.

Your Honor, as I recall, I haven't listened to that tape, but as I recall I began to make a record of what it was that I wanted to put on the record at that time, to protect my client, and to protect justice, and to protect the Court system.

As I recall, I must say it very respectfully, and maybe I am wrong, the tape would show, but I think that the Court interrupted me,and I am not sure that I even got that objection on the record.

This is one of the dangerous duties of counsel. If an objection is not properly on the record it can't be appealed. It can't be overturned.

So counsel is in the position of having to choose between his own personal safety, and justice, and making a

* * * * * *